

(b) *Invalid Form W-4.* A Form W-4 does not meet the requirements of section 3402(f)(5) or this section and is invalid if it contains an alteration or unauthorized addition. For purposes of § 31.3402(f)(2)-1(e) and this paragraph—

(1) An alteration of a withholding exemption certificate is any deletion of the language of the jurat or other similar provision of such certificate by which the employee certifies or affirms the correctness of the completed certificate, or any material defacing of such certificate;

(2) An unauthorized addition to a withholding exemption certificate is any writing on such certificate other than the entries requested (e.g., name, address, and number of exemptions claimed).

(c) *Electronic Form W-4*—(1) *In general.* An employer may establish a system for its employees to file withholding exemption certificates electronically.

(2) *Requirements*—(i) *In general.* The electronic system must ensure that the information received is the information sent, and must document all occasions of employee access that result in the filing of a Form W-4. In addition, the design and operation of the electronic system, including access procedures, must make it reasonably certain that the person accessing the system and filing the Form W-4 is the employee identified in the form.

(ii) *Same information as paper Form W-4.* The electronic filing must provide the employer with exactly the same information as the paper Form W-4.

(iii) *Jurat and signature requirements.* The electronic filing must be signed by the employee under penalties of perjury.

(A) *Jurat.* The jurat (perjury statement) must contain the language that appears on the paper Form W-4. The electronic program must inform the employee that he or she must make the declaration contained in the jurat and that the declaration is made by signing the Form W-4. The instructions and the language of the jurat must immediately follow the employee's income tax withholding selections and immediately precede the employee's electronic signature.

(B) *Electronic signature.* The electronic signature must identify the em-

ployee filing the electronic Form W-4 and authenticate and verify the filing. For this purpose, the terms “authenticate” and “verify” have the same meanings as they do when applied to a written signature on a paper Form W-4. An electronic signature can be in any form that satisfies the foregoing requirements. The electronic signature must be the final entry in the employee's Form W-4 submission.

(iv) *Copies of electronic Forms W-4.* Upon request by the Internal Revenue Service, the employer must supply a hardcopy of the electronic Form W-4 and a statement that, to the best of the employer's knowledge, the electronic Form W-4 was filed by the named employee. The hardcopy of the electronic Form W-4 must provide exactly the same information as, but need not be a facsimile of, the paper Form W-4.

(3) *Effective date*—(i) *In general.* This paragraph applies to all withholding exemption certificates filed electronically by employees on or after January 2, 1997.

(ii) *Special rule for certain Forms W-4.* In the case of an electronic system that precludes the filing of Forms W-4 required on commencement of employment and Forms W-4 claiming more than 10 withholding exemptions or exemption from withholding, the requirements of paragraph (c)(2)(iii) of this section will be treated as satisfied if the Form W-4 is filed electronically before January 1, 1999.

[T.D. 7423, 41 FR 26217, June 25, 1976, as amended by T.D. 7915, 48 FR 44074, Sept. 27, 1983; T.D. 8706, 62 FR 24, Jan. 2, 1997; T.D. 9196, 70 FR 19696, Apr. 14, 2005; T.D. 9337, 72 FR 38483, July 13, 2007]

§ 31.3402(f)(6)-1 Withholding exemptions for nonresident alien individuals.

A nonresident alien individual (other than, in regard to wages paid after February 28, 1979, a nonresident alien individual treated as a resident under section 6013(g) or (h)) subject to withholding under section 3402 is on any 1 day entitled under section 3402(f)(1) and § 31.3402(f)(1)-1 to the number of withholding exemptions corresponding to the number of personal exemptions to which he is entitled on such day by reason of the application of section

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873(b)(3) or section 876, whichever applies. Thus, a nonresident alien individual who is not a resident of Canada or Mexico and who is not a resident of Puerto Rico during the entire taxable year, is allowed under section 3402(f)(1) only one withholding exemption.

[T.D. 6908, 31 FR 16776, Dec. 31, 1966, as amended by T.D. 7670, 45 FR 6932, Jan. 31, 1980]

§ 31.3402(g)-1 Supplemental wage payments.

(a) *In general and withholding on supplemental wages in excess of \$1,000,000—*
(1) *Determination of supplemental wages and regular wages—*(i) *Supplemental wages.* An employee's remuneration may consist of regular wages and supplemental wages. Supplemental wages are all wages paid by an employer that are not regular wages. Supplemental wages include wage payments made without regard to an employee's payroll period, but also may include payments made for a payroll period. Examples of wage payments that are included in supplemental wages include reported tips (except as provided in paragraph (a)(1)(v) of this section), overtime pay (except as provided in paragraph (a)(1)(iv) of this section), bonuses, back pay, commissions, wages paid under reimbursement or other expense allowance arrangements, nonqualified deferred compensation includible in wages, wages paid as noncash fringe benefits, sick pay paid by a third party as an agent of the employer, amounts that are includible in gross income under section 409A, income recognized on the exercise of a nonstatutory stock option, wages from imputed income for health coverage for a nondependent, and wage income recognized on the lapse of a restriction on restricted property transferred from an employer to an employee. Amounts that are described as supplemental wages in this definition are supplemental wages regardless of whether the employer has paid the employee any regular wages during either the calendar year of the payment or any prior calendar year. Thus, for example, if the only wages that an employer has ever paid an employee are payments of noncash fringe benefits and income recognized on the exercise of a non-

statutory stock option, such payments are classified as supplemental wages.

(ii) *Regular wages.* As distinguished from supplemental wages, regular wages are amounts that are paid at a regular hourly, daily, or similar periodic rate (and not an overtime rate) for the current payroll period or at a predetermined fixed determinable amount for the current payroll period. Thus, among other things, wages that vary from payroll period to payroll period (such as commissions, reported tips, bonuses, or overtime pay) are not regular wages, except that an employer may treat tips as regular wages under paragraph (a)(1)(v) of this section and an employer may treat overtime pay as regular wages under paragraph (a)(1)(iv) of this section.

(iii) *Amounts that are not wages subject to income tax withholding.* If an amount of remuneration is not wages subject to income tax withholding, it is neither regular wages nor supplemental wages. Thus, for example, income from the disqualifying dispositions of shares of stock acquired pursuant to the exercise of statutory stock options, as described in section 421(b), is not included in regular wages or supplemental wages.

(iv) *Optional treatment of overtime pay as regular wages.* Employers may treat overtime pay as regular wages rather than supplemental wages. For this purpose, *overtime pay* is defined as any pay required to be paid pursuant to federal (Fair Labor Standards Act), state, or local governmental laws at a rate higher than the normal wage rate of the employee because the employee has worked hours in excess of the number of hours deemed to constitute a normal work week or work day.

(v) *Optional treatment of tips as regular wages.* Employers may treat tips as regular wages rather than supplemental wages. For this purpose, tips are defined as including all tips which are reported to the employer pursuant to section 6053.

(vi) *Amount to be withheld.* The calculation of the amount of the income tax withholding with respect to supplemental wage payments is provided for under paragraph (a)(2) through (a)(7) of this section.

(2) *Mandatory flat rate withholding.* If a supplemental wage payment, when